



WP.No.25169 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25169 of 2018
& WMP.No.29240 of 2018

Minjur Paguthi Pothu
Thozhilalar Sangam, rep.
by its Secretary, Chennai-120.

...Petitioner

Vs

- 1.The Government of Tamil Nadu,
rep.by its Secretary, Labour &
Employment Department,
Fort St.George, Chennai-9.
- 2.L & T Ship Building Ltd.,
rep.by its Managing Director,
Kattupalli Village, Ponneri
Taluk, Thiruvallur District.
- 3.M/s.Marine Infrastructure
Developer Private Limited,
Chennai-89.
- 4.Tamil Nadu Industrial Development
Corporation, Chennai-8.



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5.M/s.Aroma Facility Services,
Chennai-120.

6.M/s.Sai Saravana Traders,
No.32, Vaikunda Perumal
Koil Street, Athipattu,
Chennai-120.

7.M/s.Sai Saravana Enterprises,
No.387, Dr.Ambedkar Street,
Athipattu, NCTP Post, Chennai-120.

8.M/s.M.D.G.Builders, No.36,
Gandhi Street, Athipattu,
NCTP Post, Chennai-120.

9.M/s.K.B.Jaisankar Labour
Contractor, Chennai-120.

10.M/s.Azhagunithi Labour
Contractor, Chennai-120.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 20.3.2018 in G.O.(D) No.210 Labour and Employment Department from the first respondent, quash the same and consequently direct the first respondent to refer all the five demands and also the issue as to whether the so called contract labour system between respondents 2 and 3 and respondents 4 to 10 is sham and nominal and as to whether it is bogus and smoke screen arrangement and as to whether respondents 2 and 3 are the actual and real employer of the workmen concerned, for adjudication to the Industrial Tribunal, Chennai within a specified time.



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For Petitioner	:	Mr.V.Ajoy Khose
For R1	:	Mr.S.John J.Raja Singh, AGP
For R2	:	Mr.S.Ravindran, SC for M/s.S.Bazeer Ahamed
For R3	:	Mr.K.R.Hariharan
For R4	:	Mr.M.Vijayan for M/s.King & Patridge
For R5 to R10	:	Mr.P.Nehru

ORDER

This Writ Petition has been filed assailing the impugned order dated 20.3.2018 in G.O.(D) No.210 Labour and Employment Department passed by the first respondent and also for a direction to the first respondent to refer all the five demands and the issues with regard to the contract labour system between respondents 2 and 3 and respondents 4 to 10 for adjudication to the Industrial Tribunal, Chennai within a specified time.

2. The facts leading to filing of this case are as follows :

(i) The petitioner is a trade union registered under the Trade Unions Act, 1926 and is affiliated to the CITU. The workmen employed in various industries and establishments in Minjur Panchayat Union area, including the workmen concerned, who were working in the second respondent company,



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were the members of the petitioner.

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(ii) When the second respondent was granted permission and approval for starting their ship building company in 2008, various villages and households belonging to the fishermen were acquired and the fishermen were displaced. The fishing right of the fishermen in that area was taken away and therefore, the affected fishermen were assured employment by the second respondent.

(iii) In the second respondent, the fourth respondent has 3% shareholding. After the construction and commissioning of the establishment, the second respondent started their commercial activity in 2011. However, the second respondent did not provide employment to the displaced fishermen and to the fishermen, whose fishing right was taken away.

(iv) After continued efforts, 140 members of the displaced fishermen were given employment in the second respondent. Two minutes of understanding were reached, through which, 130 fishermen alone were given employment in 2012 through a selection process. Since the entire fishermen were not given employment by the second respondent,



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representations were given to the Chief Minister of Tamil Nadu.

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(v) Thereafter, a tripartite meeting was held on 02.1.2013, in which, it was agreed to give employment to 120 affected fishermen, out of whom 50% would be given employment immediately and the remaining 50% would be given employment after giving them three months' training in the training institute owned by the second respondent. It was also agreed that during the period of training, 60 fishermen would be paid a sum of Rs.6,000/- per month during the training period, that a training institute would be started within the premises of the second respondent at Kattupalli and that wages would be revised to the fishermen, who were given employment.

(vi) The District Collector, Tiruvallur and the Tamil Nadu Industrial Development Corporation were appointed as the Nodal Officers to oversee the implementation of the understanding. Thereafter, the Chief Minister issued orders dated 06.1.2013 stating that 120 fishermen should be given employment by the second respondent, that the second respondent should start a training institute at Kattupalli within three months so as to give training and employment to 600 fishermen and that the fishermen, who were already in employment with the second respondent would be paid increased



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wages.

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(vii) Pursuant to directions of the District Collector, Tiruvallur, the second respondent gave employment to 120 fishermen in addition to 130 fishermen, who were given employment. They were paid daily wages. Though they have been working in the second respondent for 5 years and more continuously, they were not made permanent nor extended with the status, privileges and benefits as available to the permanent workers. Hence, they joined the petitioner union and requested to take up their cause.

(viii) Therefore, the petitioner submitted a charter of demands to the second respondent. As there was no reply from the second respondent, the petitioner initiated conciliation proceedings before the Assistant Commissioner of Labour, Kuralagam on 12.8.2015. They filed additional demands on 12.10.2015. In that, the second respondent filed their remarks dated 04.11.2015 stating that the workmen concerned were not their direct employees, that they were employed through various contractors, that they were not necessary parties to the conciliation proceedings, that a person employed through a contractor could not be termed as a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and that the



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members of the petitioner working in the second respondent were doing only house keeping work and loading and unloading works and hence, they could not make a claim on par with the permanent employees. The petitioner also filed a rejoinder pointing out that the workmen concerned were all direct employees of the third respondent.

(ix) Thereafter, the second respondent filed W.P.No.2825 of 2016 seeking to direct the Conciliation Officer to implead the six contractors as parties to the proceedings. Further, this Court, by order dated 28.1.2016, directed the Conciliation Officer to decide as to whether the contractors should be added as parties after taking into consideration the objections filed by the petitioner.

(x) The petitioner once again submitted their objections dated 25.6.2016 pointing out that all the workmen concerned were direct employees of the second respondent, that they could not be termed as contract labourers employed through various contractors, who were proposed to be impleaded, that all the workmen concerned were doing skilled and technical works relating to ship building and related works and that the contractors were sought to be roped in only to defeat the claim of the



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workmen.

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(xi) On 27.5.2016, four workmen were called for by the second respondent company and on their arrival, the third respondent insisted them to have talks with one of the contractors. However, they refused to hold talks with him stating that the second respondent was their employer and there was no need for them to have talks with the contractor. From that day onwards, the said four workmen were not given employment. Hence, the petitioner sent a letter dated 02.8.2016 to the second respondent requesting them to allow the said four workmen for work.

(xii) Since the four workmen were denied employment during the pendency of the conciliation proceedings, the petitioner filed W.P. No.3709 of 2017 before this Court seeking a direction to the Government to initiate criminal prosecution against respondents 2 and 5 to 10 and it is still pending. Subsequently, the conciliation ended in failure.

(xiii) Pursuant to the failure of the conciliation proceedings, the first respondent issued two Government Orders namely G.O.Ms.Nos. 209 and 210 both dated 20.3.2018. By G.O.Ms.No.209 dated 20.3.2018, the first respondent referred only two demands of the petitioner namely demand



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No.5 and part of demand No.6 to the Industrial Tribunal, Tamil Nadu, Chennai. However, by G.O.Ms.No.210 dated 20.3.2018, the first respondent declined to refer the remaining demands such as demand Nos.1 to 4 and part of demand No.6 raised by the petitioner by adjudicating each demands on their own merits. Hence, challenging G.O.Ms.No.210 dated 20.3.2018 issued by the first respondent declining to refer the five demands and to direct the first respondent to refer other issues for adjudication to the Industrial Tribunal, Tamil Nadu, Chennai, the petitioner has filed this writ petition.

3. Though very many grounds have been raised, learned counsel appearing for the petitioner union submits that as the 2nd respondent had made the following admission in the counter affidavit with regard to the demand raised by the petitioner Union, this Court may, without going into the merits of the case, issue a direction to the 1st respondent to refer the dispute to the Industrial Tribunal for adjudication within the time frame as may be stipulated by this Court.

4. The first respondent filed a counter affidavit stating as follows:



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(i) Though the first respondent was unaware of the assurance made by the second respondent, the Government has a policy of providing employment to the affected families in the course of establishing any industries or factories by the Government in the areas affecting the families of the fishermen. Respondents 3 to 10 provided employment by virtue of the relevant provisions. But, it appeared that there was no employer - employee relationship between the second respondent and the workmen appointed through the contractors. Further, it could not be contended that the appointed persons were getting lesser salary.

(ii) The first respondent rejected demand No.1 by taking note of the fact that the second respondent got registration under the Contract Labour (Regulation and Abolition) Act, 1970 and directed the petitioner to first move the Government for abolition and prohibition of contract labour system and thereafter to move the Authority under the Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Further, only on a careful scrutiny of the failure report submitted by the Conciliation Officer and his recommendations, the first respondent declined to refer the other demands for adjudication before the Industrial Tribunal in consonance with



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the provisions of the Industrial Disputes Act, 1947. Further, no proof was enclosed in respect of the demands so as to enable the first respondent to refer the demands for adjudication before the Industrial Tribunal. Ultimately, the first respondent sought to dismiss the writ petition.

5. Learned counsel appearing on behalf of the second respondent submits that admittedly, the petitioner union raised an industrial dispute claiming that the members of the petitioner union were working through the contractors only at the instigation of the 2nd respondent. However, the appropriate remedy available for the petitioner union or the workmen concerned would be under the Contract Abolition Act and not under Section 2K of the Industrial Disputes Act. He further submitted that the first respondent is entitled to prima facie consider the validity of an industrial dispute raised by a trade union under Section 10 of the Industrial Disputes Act, 1947. Further, the first respondent is also empowered to reject an industrial dispute on valid grounds. The first respondent had not decided the dispute raised by the petitioner. Since certain demands raised by the petitioner were outside the scope of adjudication, they were rightly declined



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to be referred for adjudication. If at all the petitioner union wants minimum wages in terms of G.O, the appropriate remedy available for them would be to approach the authority under the minimum wages Act or if they want minimum wages on par with the regular employees they have to raise a dispute before the appropriate forum and not under Section 2k of the ID Act. The said fact has been elaborately considered by the 1st respondent while rejecting the claim of the petitioner by forming an opinion in terms of Section 10A of the Act. Accordingly, he prayed for dismissal of this Writ Petition.

6. The fourth respondent filed a counter affidavit stating as follows :

(i) The second respondent was a subsidiary of M/s.Larsen & Toubro Limited, which approached the fourth respondent to invest in the shares of the second respondent. Accordingly, the fourth respondent invested 3% of the shares by entering into associate sector agreement with the said M/s.Larsen & Toubro Limited. As per the said agreement, the fourth respondent would be entitled to disinvest the shares held by it in the second respondent and in such an event, the said M/s.Larsen & Toubro Limited



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should buy the shares of the fourth respondent and has a right to send proposal to the fourth respondent for buying the shares.

(ii) In terms of the said agreement, the said M/s.Larsen & Toubro Limited sent proposals to buy the shares held by the fourth respondent in the second respondent and the fourth respondent also accepted the proposal. The decision to disinvest was approved by the Board of Directors of the fourth respondent on 26.9.2018. The Government of Tamil Nadu also conveyed its approval to the proposal of the fourth respondent for disinvestment. Accordingly, the 3% shares held by the fourth respondent in the second respondent were transferred to the said M/s.Larsen & Toubro Limited on 10.4.2019 after receiving the sale price of the shares.

(iii) While holding the shares in the second respondent, the fourth respondent did not have any role to play in the day to day administration and affairs of the second respondent. As per the said agreement, the day to day affairs of the second respondent is vested with the Managing Director of the second respondent as was nominated by the said M/s.Larsen & Toubro Limited. The fourth respondent is neither a necessary party nor a proper party to the writ petition. Ultimately, it was prayed to dismiss the writ



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petition as against the fourth respondent.

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7. Heard the learned counsel for the respective parties and perused the materials available on record.

8. Admittedly the members of the petitioner union are employed with the 2nd respondent. It is the claim of the petitioner union that they are directly employed with the 2nd respondent whereas the 2nd respondent claims that they are only the contractual employees based on the registration under the Contract Abolition Act.

9. However, on perusal of the materials available on record as also the submissions of the learned counsel appearing, more particularly the counter affidavit filed on behalf of the respondents, this Court feels that giving any opinion with regard to the issues raised by the parties would not be in the interest of either party. This Court feels that interest of justice warrants that the demand raised by the Union has to be decided by the Tribunal at which point of time, the maintainability of the dispute under Section 2K of the ID



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Act could be pleaded and adjudicated as a preliminary issue by the Tribunal.

10. Further, it is fairly submitted by the petitioner that the dispute could be referred in terms of the counter affidavit of the 1st respondent before the conciliation officer with regard to the 240 workmen and the wages that should be fixed and to the limited extent, the 1st respondent can refer the dispute to the Tribunal for adjudication under Schedule 5 of the ID Act.

11. In view of the above, the impugned order of the 1st Respondent is set aside and the 1st respondent is directed to refer the dispute as stated in para-10 above as stated in their counter to the Industrial Tribunal, Chennai within a period of six weeks from the date of receipt of a copy of this order. This Writ Petition is partly allowed. However, in respect of other charted demands, it is not referable dispute and therefore no reference be made with regard to the same. However, liberty is granted to the petitioner as well as the 2nd respondent to raise all those issues before the Industrial Tribunal.

M.DHANDAPANI,J

NHS



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There shall be no order as to Costs. Consequently, the connected

Miscellaneous Petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

NHS

To

- 1.The Secretary to Government
of Tamil Nadu, Labour &
Employment Department,
Fort St.George, Chennai-9.
- 2.The Tamil Nadu Industrial Development
Corporation, Chennai-8.
- 3.The Industrial Tribunal,
Tamil Nadu, Chennai.

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